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HARCHARAN SINGH SOHAN SINGH

v.

RANJIT KAUR S GEAN SINGH

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FEDERAL COURT, PUTRAJAYA
ALAUDDIN MOHD SHERIFF PCA
HASHIM YUSOFF FCJ
RAUS SHARIF FCJ
[CIVIL APPEAL NO: 02()-30-2009 (P)]

C

24 FEBRUARY 2011

CIVIL PROCEDURE: *Appeal - Appeal to Court of Appeal - Failure to obtain leave - Value of subject matter less than RM250,000 - Subject matter of claim involving declaratory relief - Court of Appeal Practice*

D

Direction No. 2 of 1996, item (ii) - True meaning and effect of s. 68(1)(a) Courts of Judicature Act 1964 - Point of time at which value of subject matter ought to be determined - Courts of Judicature Act 1964, s. 68(1)(a)

E

CIVIL PROCEDURE: *Appeal - Leave to appeal - Court of Appeal - Value of subject matter less than RM250,000 - Subject matter of claim involving declaratory relief - Court of Appeal Practice Direction No. 2 of 1996, item (ii) - True meaning and effect of s. 68(1)(a) Courts of Judicature Act 1964 - Point of time at which value of subject matter ought to be determined - Courts of Judicature Act 1964, s. 68(1)(a)*

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This appeal arose from the Court of Appeal's decision striking out the appellant's appeal on the ground that the appellant had failed to obtain leave of the Court of Appeal pursuant to s. 68(1)(a) of the Courts of Judicature Act 1964 ('s. 68(1)(a)'), as the value of

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the subject matter was allegedly less than RM250,000. The appellant submitted that s. 68(1)(a) did not apply because the subject matter of the claim was for a declaration coupled with a claim for ancillary reliefs and, therefore, no leave was required before an appeal could be brought to the Court of Appeal. The

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following questions of law were posed: (i) what is the true meaning and effect of s. 68(1)(a) which provides that no appeal shall be brought to the Court of Appeal when the amount or value of the subject matter of the claim (exclusive of interest) is less than RM250,000, except with the leave of the Court of Appeal?;

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and (ii) further and/or in the alternative, at which point of time is the amount or value of the subject matter of the claim (exclusive of interest) to be determined for the purposes of s. 68(1)(a)?

Held (dismissing the appeal with costs)
Per Hashim Yusoff FCJ delivering the judgment of the court:

(1) The legal authority that decides whether leave is required under s. 68(1)(a) is the Court of Appeal and it follows that the decision of the Court of Appeal is final. In the instant appeal, the Court of Appeal had already dismissed the appeal for lack of jurisdiction since there was no leave obtained to proceed with the appeal. *Lam Kong Company Ltd v. Thong Guan Co Pte Ltd* (foll). (para 17)

(2) As for the contention that s. 68(1)(a) did not apply because the relief sought by the appellant was for a declaration, this court agreed with the Court of Appeal's judgment in *Lam Kong Company Ltd v. Thong Guan Co Pte Ltd* where it was held, *inter alia*, that item (ii) of the Court of Appeal Practice Direction No. 2 of 1996 only applies to declarations respecting subject matters that have no value attached to them or those with values that cannot be quantified. *Lam Kong Company Ltd v. Thong Guan Co Pte Ltd* (foll). (para 18)

(3) In the present appeal, the subject matter of the claim had been identified and its value determined at RM248,500. Therefore, s. 68(1)(a) was still applicable. (para 19)

(4) For the above reasons, Question (i) was answered in the affirmative in that s. 68(1)(a) still applies when the amount or value of the subject matter of the claim (exclusive of interest) is less than RM250,000. (para 20)

(5) The time for determining the current value of the subject matter of the claim (exclusive of interest) as raised in Question (ii) would be at the time of filing the claim. *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor* (foll). (para 21)

Bahasa Malaysia *Translation Of Headnotes*

Rayuan ini berbangkit dari keputusan Mahkamah Rayuan membatalkan rayuan perayu atas alasan perayu telah gagal mendapatkan kebenaran Mahkamah Rayuan menurut s. 68(1)(a) Akta Mahkamah Kehakiman ('s. 68(1)(a)'), disebabkan nilai perkara dikatakan kurang dari RM250,000. Perayu menghujah bahawa s. 68(1)(a) tidak terpakai kerana perkara tuntutan adalah untuk deklarasi bersama-sama dengan tuntutan bagi relief-relief sampingan

dan, oleh itu, kebenaran tidak diperlukan sebelum suatu rayuan boleh dihadapkan di Mahkamah Rayuan. Soalan-soalan undang-undang yang berikut telah dikemukakan: (i) apakah maksud dan kesan sebenar s. 68(1)(a) yang memperuntukkan bahawa rayuan tidak dapat dihadapkan ke Mahkamah Rayuan apabila amaun atau nilai perkara tuntutan (dengan bunga dikecualikan) adalah kurang dari RM250,000, kecuali dengan kebenaran Mahkamah Rayuan?; dan (ii) lagipun dan/atau secara alternatif, bilakah masa amaun atau nilai perkara tuntutan (dengan bunga dikecualikan) akan ditentukan bagi tujuan s. 68(1)(a)?

Diputuskan (menolak rayuan dengan kos)
Oleh Hashim Yusoff HMP menyampaikan penghakiman mahkamah:

(1) Otoriti undang-undang yang memutuskan sama ada kebenaran diperlukan di bawah s. 68(1)(a) adalah Mahkamah Rayuan dan ia bererti bahawa keputusan Mahkamah Rayuan adalah muktamad. Dalam rayuan semasa, Mahkamah Rayuan telahpun menolak rayuan atas ketiadaan bidangkuasa disebabkan tidak ada kebenaran yang diperolehi untuk meneruskan rayuan. *Lam Kong Company Ltd v. Thong Guan Co Pte Ltd* (diikuti).

(2) Berhubungan dengan hujahan bahawa s. 68(1)(a) tidak terpakai kerana relief yang dituntut oleh perayu adalah untuk suatu deklarasi, mahkamah ini bersetuju dengan penghakiman Mahkamah Rayuan dalam *Lam Kong Company Ltd v. Thong Guan Co Pte Ltd* di mana ia telah diputuskan, antara lain, bahawa item (ii) Arahan Amalan No. 2 Tahun 1996 Mahkamah Rayuan hanya terpakai kepada deklarasi berkenaan dengan perkara-perkara yang tidak diletakkan nilai atau perkara-perkara dengan nilai-nilai yang tidak dapat dijumlahkan. *Lam Kong Company Ltd v. Thong Guan Co Pte Ltd* (diikuti).

(3) Di dalam rayuan semasa, perkara tuntutan telah dikenalpasti dan nilainya ditentukan sebanyak RM248,500. Oleh itu, s. 68(1)(a) masih digunapakai.

(4) Untuk sebab-sebab di atas, Soalan (i) dijawab secara afirmatif di mana s. 68(1)(a) masih digunapakai apabila amaun atau nilai perkara tuntutan (dengan bunga dikecualikan) adalah kurang dari RM250,000.

(5) Masa bagi menentukan nilai semasa perkara tuntutan (dengan bunga dikecualikan) seperti yang dikemukakan dalam Soalan (ii) adalah semasa tuntutan difailkan. *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor* (diikuti).

Case(s) referred to:
Lam Kong Company Ltd v. Thong Guan Co Pte Ltd [2000] 3 CLJ 769 FC ***(foll)***
Mohd Tahir Mohd Sheriff v. Ramlah Abdullah [2004] 1 CLJ 865 CA ***(foll)***
Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor [1997] 2 CLJ 68 FC ***(foll)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 67(1), 68(1)(a)
Small Estates Distribution Ordinance 1955, s. 8
Specific Relief Act 1950, s. 41

For the appellant - Dato' Mahinder Singh Dulku; M/s Mahinder Singh Dulku & Co
For the respondent - Balwant Singh; M/s Balwant Singh & Co

[Appeal from Court of Appeal, Civil Appeal No: P-02-468-2003]

[Editor's note: For the Court of Appeal judgment, please see Harcharan Singh Sohan Singh v. Ranjit Kaur S Gean Singh [2010] 3 CLJ 29.]

Reported by Suresh Nathan

JUDGMENT

Hashim Yusoff FCJ:

[1] In this appeal three questions of law are posed before us as follows:

(1) What is the true meaning and effect of Section 68(1)(a) of the Courts of Judicature Act, 1964 (Act 91) which provides that no appeal shall be brought to the Court of Appeal when the amount or value of the subject matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal?

(2) Further and/or in the alternative at which point of time is the amount or value of the subject matter of the claim (exclusive of interest) to be determined for the purposes of Section 68(1)(a) of the Courts of Judicature Act, 1964 (Act 91)?

A (3) Further and/or in the alternative is the amount or value of the subject matter of the claim (exclusive of interest) to be determined by looking at the judgment in question as it affects the interests of the party who is prejudiced by it and who seeks to appeal?

B **[2]** At the outset learned counsel for the appellant informed us that he was confining his appeal to questions (1) and (2).

Background

C **[3]** This appeal arose from the decision of the Court of Appeal in allowing the preliminary objection raised by the respondent before it, when it held that the appellant's appeal was incompetent and thereby struck it out on the ground that the appellant had failed to obtain leave to the Court of Appeal, pursuant to
D s. 68(1)(a) of the Courts of Judicature Act 1964 ('the Act'), as the value of the subject matter was allegedly less than RM250,000.

[4] Learned counsel for the appellant submitted that in order to
E be able to answer the questions posed, it is relevant to keep in mind s. 67 of the Act which provides:

67 Jurisdiction to hear and determine civil appeals

F (1) The (Court of Appeal) shall have jurisdiction to hear and determine appeals from any judgement or order of any High Court in any civil (cause or) matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought.

G (2) The (Court of Appeal) shall have all the powers conferred by section 24A of the High Court under the provisions relating to references under order of the High Court.

[5] It was further submitted that s. 68(1)(a) of the Act does not apply because the subject matter of the claim is for a declaration
H coupled with a claim for ancillary relief(s) and therefore no leave is required before an appeal could be brought to the Court of Appeal.

Section 68(1)(a) of the Act provides:

I (1) No appeal shall be brought to the (Court of Appeal) in any of the following cases:

((a) when the amount or value of the subject matter of the claim (exclusive of interest) is less than (two hundred and fifty) thousand ringgit, except with the leave of the (Court of Appeal) ...;)

[6] Reference was made to the amended statement of claim of the appellant (see pp. 108/137 of appeal record vol. 2), in particular to para. 17(1) where the appellant had claimed for a declaration that he is the beneficial owner of the half undivided share in Lot 1217, Section 3, Town of Ayer Itam, North East District, Penang together with the house erected thereon, bearing postal address 513, Hill Railway Road, Penang ('the said property') previously belonging to the appellant's brother Bhagwan Singh s/o Sohan Singh since deceased ('late brother').

[7] It was the appellant's case that he had jointly purchased the said property with his late brother on 3 May 1963 from Lee Eng Hock & Company Ltd. at a price of RM18,000. The appellant and his late brother had paid the sum of RM9,000 in equal shares for the purchase of the said property and the balance of the purchase price was borrowed from the Overseas Chinese Banking Corporation Ltd. (OCBC) on the security of the said property.

[8] Sometime in early 1965, the late brother due to his family and financial problems had offered to the appellant to purchase his half undivided share in the said property subject to the existing charge to OCBC at the price of RM4,500. The appellant all along had serviced the interest payments levied by OCBC on the aforesaid loan.

[9] It was only after the late brother's death on 4 August 1990, that his widow (the respondent) applied for Letters of Administration of his estate.

[10] Learned counsel for the appellant submitted that no leave is required of the Court of Appeal where the principal claim in the proceedings is for a specific relief, as in this case, for a declaration and other ancillary reliefs pursuant to s. 41 of the Specific Relief Act 1950. Claims for specific relief are outside the ambit of s. 68(1)(a) of the Act and the matter is instead governed by s. 67(1) of the Act which confers jurisdiction on the Court of Appeal to hear appeals without the leave of the Court of Appeal.

[11] Learned counsel for the respondent's main contention is that leave to appeal to the Court of Appeal is required because the value of the disputed property is less than RM250,000. It was submitted that the learned judge of the High Court had made a valuation of the disputed property to be RM248,500. This valuation was confirmed by the Court of Appeal. The cut off point to determine the value of the property should be at the time when the claim was filed.

Court's Findings

[12] We agree with the Court of Appeal's decision in *Mohd Tahir Mohd Sheriff v. Ramlah Abdullah* [2004] 1 CLJ 865 that s. 68(1)(a) of the Act is unambiguous. It clearly states that no appeal shall be brought to the Court of Appeal when the amount or value of the subject matter of the claim (exclusive of interest) is less than RM250,000, except with leave of the Court of Appeal.

[13] This appeal therefore hinges on the value of the disputed property. The phrase "amount or value of the subject matter of the claim." Section 68(1)(a) of the Act was considered by the Supreme Court in *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 2 CLJ 68 where it was held that it must be read as the amount or value of the claim filed in the civil suit and not the judgment amount granted against. That would be the determinant factor in deciding whether leave was necessary.

[14] In his grounds of judgment, the learned judge of the High Court while taking into account that the respondent had disclosed that she had valued her half share of the disputed property at RM300,000, also reverted to the estate duty's valuation of the said half share to be RM248,500.

[15] It is to be noted that her application dated 3 July 1997, for the distribution of the estates of her deceased husband's estate under s. 8 of the Small Estate Distribution Ordinance 1955, (see pp. 441/407 to 445/411 of the appeal record vol. 5) the respondent herself had put a valuation of RM300,000 on the said half share of the disputed property.

[16] However the value of the subject matter of the claim (half share of the disputed property) as pleaded in the amended statement of defence was RM248,500, which was the same value assessed for estate duty in the schedule to the Letters of

Administration issued to the respondent (see p. 417/451 appeal record vol. 5) dated 26 August 1997. This valuation had been accepted by the learned trial judge and subsequently by the Court of Appeal. As this would be the concurrent findings of facts by the courts below we would be slow to interfere with such findings.

[17] This court in *Lam Kong Company Ltd. v. Thong Guan Co. Pte. Ltd.* [2000] 3 CLJ 769 held that the legal authority to decide whether leave is required or not under s. 68(1)(a) of the Act is the Court of Appeal and it follows that the decision of the Court of Appeal is final. To hold otherwise would lead to absurdity and defeat the "filter" principle unless an appeal from it is expressly given. In the instant appeal the Court of Appeal had already dismissed the appeal for lack of jurisdiction since there was no leave obtained to proceed with the appeal.

[18] As for the contention that s. 68(1)(a) of the Act does not apply because the relief sought by the appellant is for a declaration, we agree with the judgment of the Court of Appeal in *Lam Kong Company Ltd. v. Thong Guan Co. Pte Ltd. (supra)* where it was held *inter alia*, that item (ii) of the Court of Appeal Practice Direction No. 2 of 1996 only applies to declarations respecting subject matters that have no value attached to them or those with values that cannot be quantified.

[19] In the appeal before us, the subject matter of the claim had been identified and its value determined at RM248,500. Therefore we are of the view that s. 68(1)(a) of the Act is still applicable.

[20] For the above reasons, we would answer Question No. 1 in the affirmative in that s. 68(1)(a) of the Act still applies when the amount or value of the subject matter of the claim (exclusive of interest) is less than RM250,000.

[21] The time for determining the current value of the subject matter of the claim (exclusive of interest) as raised in Question No. 2, would be at the time of filing the claim. (See *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor, supra*).

[22] The appeal is therefore dismissed with costs.